

EXHIBIT A

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Case: 19-2769

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

U.S. COMMODITY FUTURES TRADING) Docket No. 15 CV 2881
COMMISSION,)
Plaintiff,)
vs.) Chicago, Illinois
March 22, 2019
11:00 o'clock a.m.
KRAFT FOODS GROUP, INC., and)
MONDELEZ GLOBAL, LLC,)
Defendants.)

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TRANSCRIPT OF PROCEEDINGS - Settlement Conference
BEFORE THE HONORABLE JOHN ROBERT BLAKEY

APPEARANCES:

For the Plaintiffs: U.S. COMMODITY FUTURES
TRADING COMMISSION
BY: MR. MICHAEL D. FRISCH
MR. ROBERT T. HOWELL
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Suite 1100
Chicago, Illinois 60661

For the Defendants: JENNER & BLOCK
BY: MR. J. KEVIN MCCALL
MR. DEAN N. PANOS
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1 (The following SEALED proceedings were had in court:)

2 COURTROOM DEPUTY: 15 C 2881, U.S. Commodity versus
3 Kraft.

4 THE COURT: Good morning, counsel. Appearances
5 please.

6 MR. FRISCH: Michael Frisch on behalf of the CFTC.
7 Good morning, your Honor.

8 MR. PANOS: Good morning, your Honor. Dean Panos;
9 and with me today is also counsel of record Kevin McCall,
10 Greg Kaufman, Nicole Allen.

11 THE COURT: Great. Are the parties ready for a
12 settlement conference?

13 MR. PANOS: We are, Judge.

14 MR. FRISCH: Yes, your Honor.

15 THE COURT: All right. This is how I handle
16 settlement conferences: I just basically have the parties
17 give consent to my procedures on the record, then we go off
18 the record and, you know, it's a normal mediation-type
19 format. Each side will have an opportunity together to just
20 give a basic overview of how they see the case. Then the
21 parties are separated and then I go back and forth between
22 the parties and see if there's any common ground on it.

23 If we settle the case, great. If we don't, that's
24 also great. I get paid either way so -- but whatever
25 happens -- a settlement conference is like Las Vegas.

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1 Whatever happens stays here even if you settle the case. So
2 anything I say during the settlement conference, anything the
3 parties say during the settlement conference -- whether it's
4 the joint session or the separate ex parte sessions -- is not
5 admissible or even disclosable to anyone at any time in any
6 pleading or at any cocktail party so that's a condition of
7 going forward.

8 Additionally, just some expectation things, I'm not
9 going to give advisory rulings. I don't have an interest in
10 this case other than the rule of law. I'm happy to try the
11 case. I'm happy to have the case settle. It doesn't really
12 make any difference to me. The purpose of this session is
13 not to give advisory rulings or give an idea of what I might
14 do at a dispositive motion or a trial ruling. In fact, I
15 can't even tell you what those answers would be anyway
16 because I don't know what those answers are because those
17 things are not in front of me and I haven't had an
18 opportunity to have the benefit of the adversarial process
19 and time to consider them. So if that's your hope in this,
20 then you're going to be sadly disappointed.

21 I'm also not going to tell you either in the joint
22 sessions or the separate sessions how good your case is
23 because that's not useful. So if I, in a session, start
24 talking about litigative risks or something else, don't
25 interpret that I have anything against your case because I

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1 don't. And if you were in the session with the other side,
2 you would probably feel differently because I'm going to
3 discuss with both sides areas of concern.

4 Any objection to proceeding in that fashion?

5 MR. FRISCH: No, your Honor.

6 MR. PANOS: No, your Honor.

7 THE COURT: All right. If both sides consent to the
8 settlement conference, then we'll go ahead and do that.

9 All right. We're off the record.

10 (Discussions had off the record, after which the
11 following proceedings were had in open court at 3:50 p.m.:)

12 THE COURT: All right. Calling the case 15 CV 2881,
13 U.S. Commodity versus Kraft.

14 The parties have engaged in a settlement conference
15 over the last almost five hours, have reached an agreement
16 regarding the materials terms. Please listen carefully to
17 make sure I haven't forgotten something. Okay. The Court is
18 going to articulate the material terms for the record and
19 then I'll ask each side to indicate whether or not these are,
20 in fact, the material terms of the settlement and if there
21 are any clarifications, revisions or other terms that I did
22 not mention, failure to clarify to the Court or add the terms
23 will waive those.

24 Item one. The parties will prepare for the Court's
25 signature a consent judgment that will be public.

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1 There will be no pre-dismissal of any counts.

2 Number two.

3 Number three. The consent judgment will have a
4 general reference to the procedural posture of the case. It
5 will include what the allegations are, the defendant's denial
6 of those allegations and the fact that the parties have
7 agreed to resolve those matters. The consent judgment would
8 not have historical, and by "historical" I mean findings of
9 fact regarding what happened in the past, nor would it have
10 legal conclusions regarding what happened in the past.

11 There would be a monetary penalty in the amount of
12 \$16 million payable by the defendant to the plaintiff payable
13 in full within 90 days. There would also be an agreement of
14 prospective injunctive relief which would trace the general
15 language of the statute and regulations as alleged and the
16 parties would agree that there would be no violation of these
17 sections in the future.

18 There would be a mutual confidentiality clause that
19 would read as follows in verbatim as follows, not in -- I'm
20 not paraphrasing; I'm quoting: Neither party shall make any
21 public statement about this case other than to refer to the
22 terms of this settlement agreement or public documents filed
23 in this case, except any party may take any lawful position
24 in legal proceedings, testimony or by court order.

25 The Court itself has final approval over the actual

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1 written agreement. So once the parties submit this public
2 consent judgment, the Court has to agree that it is a lawful
3 order that I can enter. If I choose not to sign it, this
4 agreement is no longer binding.

5 Also, a material term is that the Commission itself
6 has to -- pursuant to its rules and regulations has to agree
7 to the settlement. That would essentially be an up or down
8 vote. They would not have the power to unilaterally change
9 the material terms.

10 Are there any material terms that I forgot to
11 mention or any clarification on behalf of the plaintiff?

12 MR. McCALL: Yes, your Honor. One clarification.

13 THE COURT: On behalf of the plaintiff.

14 MR. HOWELL: Robert Howell on behalf of the CFTC.
15 Those terms sound okay with the CFTC.

16 THE COURT: They what?

17 MR. HOWELL: They're okay to the CF -- that's -- we
18 agree.

19 THE COURT: Okay. There are no other material terms
20 that I failed to mention, correct?

21 MR. HOWELL: Correct.

22 THE COURT: There are no changes to the terms as
23 articulated, correct?

24 MR. HOWELL: Correct.

25 THE COURT: Okay. On behalf of defense?

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1 MR. McCALL: The one change -- with respect to --

2 THE COURT: You got to give your -- you got to say
3 your name, counsel.

4 MR. McCALL: I'm sorry. Kevin McCall on behalf of
5 defendants.

6 With respect to the issue of the injunction that
7 says we won't violate -- it's agreeable if it says we won't
8 violate the Commodities Exchange Act or the provisions
9 thereof not reciting specific provisions.

10 THE COURT: No. Nope. That's not the deal I
11 offered. My offered deal, it was a general language
12 regarding using -- tracing the statutory language
13 prospectively that was alleged in the case so you're agreeing
14 that you will not violate the law.

15 MR. McCALL: We're agreeing that we won't violate
16 the -- we're not agreeing that we're not going to violate the
17 anti-manipulation provisions.

18 MR. PANOS: Again --

19 THE COURT: All right. Hang on a second, counsel,
20 Hang on a second, counsel. You're saying you're not going to
21 agree to follow the law if I -- if I do a specific section of
22 the law? Is there some section of the law that you think you
23 can violate in the future?

24 MR. McCALL: No, no.

25 THE COURT: Why don't you take a second and talk to

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1 co-counsel?

2 MR. McCALL: Sure.

3 MR. PANOS: That wasn't what he was saying.

4 THE COURT: Well, clarify it because that's what it
5 sounded like.

6 (Brief pause.)

7 MR. McCALL: No. We're saying -- we're agreeing
8 that we won't violate the Commodities Exchange Act in its
9 entirety. That's what we're saying. We're not agreeing that
10 we're not going to violate some specific provision of the
11 Commodities Exchange Act because we don't want the
12 implication that there's -- that this settlement is some
13 acknowledgment that there's been some violation of the
14 Commodities Exchange Act.

15 THE COURT: There is no -- based on the discussion
16 the Court had, there was no agreement that there was any
17 violations in the past. If you're -- if you believe that
18 agreeing that specific portions of the law you're not going
19 to agree that you would not violate on a prospective basis,
20 I'm finding that hard to believe but that's your choice so
21 all dates and deadlines to stand.

22 MR. PANOS: Your Honor --

23 THE COURT: The settlement is not going forward.

24 MR. PANOS: Your Honor, that's not what he said with
25 all due respect.

1 THE COURT: He's saying -- No. He's saying that
2 there are -- he doesn't want to cite specific provisions of
3 the law that they will not -- that they will abide by
4 specific provisions of the law in the future, right?

5 MR. PANOS: No.

6 MR. McCALL: Well --

7 MR. PANOS: No. I don't -- I think we have a
8 miscommunication.

9 THE COURT: Okay. Why don't you articulate what you
10 think it is and then see if he agrees?

11 MR. PANOS: Let me try.

12 MR. McCall: Let's have a minute.

13 THE COURT: Okay.

14 MR. PANOS: Can I try?

15 MR. McCALL: Yeah. Go ahead.

16 MR. PANOS: All right. I think what we're saying as
17 we understand it is that the agreement would say that
18 defendants agree that they will not violate any -- any of the
19 provisions in the Commodities Exchange Act, any or -- any
20 specific ones if that's what they're asking for --

21 THE COURT: Yes. That is what exactly what they're
22 asking for.

23 MR. PANOS: Okay. That wasn't -- by the way, we
24 hadn't had that -- you said the general language because
25 usually it is.

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1 THE COURT: I said it was general language in
2 respect it would not be specific language regarding positions
3 you would take in futures -- not specifically factual but it
4 would trace the general language of the statute provisions
5 that were alleged in this case.

6 MR. PANOS: And that we've denied those allegations.

7 THE COURT: There's nothing that says that you --

8 MR. PANOS: And I think that --

9 THE COURT: As a factual matter, you've denied that
10 you violated in the past.

11 MR. PANOS: Right.

12 THE COURT: There is no legal determination in this
13 agreement that you violated in the past. You will agree to
14 abide by the law, including specific provisions of the code
15 going forward. If that's not -- if that's insufficient, tell
16 me now, counsel.

17 MR. PANOS: Give me a second, Judge.

18 (Brief pause.)

19 MR. PANOS: We agree, Judge.

20 THE COURT: All right. Both parties agree. The
21 material terms are on the record. What's a -- can you look
22 at your calendar and look for about a date about, what do you
23 think, 30 days out to finalize the paperwork? How long do
24 you need?

25 MR. PANOS: 30 is fine for us, your Honor.

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1 MR. HOWELL: Just to be clear, as you know, we have
2 to have the Commission approval so is this to get the -- I
3 mean --

4 THE COURT: This is just to finalize the document
5 that puts in writing what we just said.

6 MR. HOWELL: Okay. We can do that. The Commission
7 can take longer.

8 MR. PANOS: I mean, yeah, we don't care about the
9 cadence in terms of which comes first. Obviously, we only
10 wanted to do this one time if we can.

11 MR. HOWELL: Typically -- sorry. So the Commission
12 has to approve it before it goes to the Court and so we would
13 ask for additional time.

14 THE COURT: How much time do you need? I'll give
15 you any date you want.

16 MR. HOWELL: 60.

17 THE COURT: You want 90?

18 MR. HOWELL: 60 should be fine.

19 THE COURT: Kristina, can you grab me a 60-day date?
20 She had a 30-day date ready.

21 LAW CLERK: May 24th. Is that a court date, Judge?

22 THE COURT: I need to check -- hang on a second,
23 counsel.

24 (Brief pause.)

25 THE COURT: How about May 21st at 9:45? Is that

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1 good?

2 MR. HOWELL: Yeah. I'm wondering if it makes sense
3 to set a period of time for us to work out the agreement and
4 then for time.

5 THE COURT: You don't need adult -- I mean, you
6 don't need parental supervision of that? Come on now.

7 MR. HOWELL: We just --

8 MR. PANOS: I don't, Judge, but Mr. Howell --

9 THE COURT: Look at that, I got all aggressive and
10 everything. No; I'm kidding.

11 MR. HOWELL: We just need to make sure we have
12 enough time to circulate to the Commission. So if we don't
13 reach agreement, we're going to --

14 THE COURT: How about May 28th?

15 MR. PANOS: That might be Memorial Day.

16 THE COURT: I don't know if you need 90, counsel.

17 (Brief pause.)

18 MR. HOWELL: Apparently May 28th is -- will work.

19 THE COURT: All right. May -- I'm setting the
20 status May 28th at 9:45. If you all submit the paperwork and
21 give me time to review it and enter it, I'll strike the date.
22 Sound good?

23 MR. PANOS: Thank you, your Honor.

24 MR. HOWELL: Thank you, your Honor.

25 THE COURT: All right. All other dates and

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1 deadlines are stricken pending further order.

2 Congratulations, everybody. Have a great weekend.

3 MR. HOWELL: Thank you, your Honor.

4 MR. PANOS: Thank you, your Honor.

5 (Which concluded the proceedings in the above-entitled
6 matter.)

7 C E R T I F I C A T E

8 I hereby certify that the foregoing is a transcript
9 of proceedings before the Honorable John Robert Blakey on
10 March 22, 2019.

11
12 /s/Laura LaCien

13 Laura LaCien
14 Official Court Reporter

March 29, 2019
Date